

followed, namely that we should uphold the learned judge's order dismissing the application, so that the case should continue before the President of the Sessions Court. Only after he has determined the case, after fully considering counsel's submission on the evidence and the law, and, if there is an appeal, after the learned High Court judge has given us the benefit of his views on all the points raised, will it be convenient for us to consider such points of law of public importance that may be referred to us by him under section 66(1).

This application is dismissed.

*Application dismissed.*

Solicitors: *Joseph & Son.*

### R. KANDASAMY v. KEMPAS (MALAYA) BHD.

[F.C. (Suffian L.P., Wan Sulaiman & Chang Min Tat F.JJ.)  
October 31 & December 12, 1980]

[Kuala Lumpur — Federal Court Civil Appeal  
No. 109 of 1979]

*Industrial Law — Dismissal of workman — Reference by Minister to Industrial Court — Wrong section cited in reference — Whether affects jurisdiction — Industrial Relations Act, 1967, ss. 16A (repealed) & 26.*

*Administrative Law — Application for certiorari — Award of Industrial Court — Reference by Minister citing wrong section of Act — Whether affects jurisdiction — Industrial Relations Act, 1967, ss. 16A (repealed) & 26.*

In this case the appellant had been dismissed by the respondent company and on reference by the Minister to the Industrial Court, the Industrial Court ordered that he be reinstated. The respondent did not reinstate him but applied for an order of *certiorari* to quash the award of the Industrial Court. At the hearing before the High Court, a preliminary point was raised that in the reference by the Minister, the wrong section was cited, as section 16A had been repealed. The learned judge upheld the preliminary objection and held that therefore the Industrial Court had no jurisdiction to hear the dispute. The appellant appealed.

**Held:** (1) what matters is whether the Minister has the power to refer the dispute to the Industrial Court, not whether or not the right section had been cited in his letter of reference. The Minister has power to make the reference under section 23 of the Industrial Relations Act, 1967, and the fact that the letter mentioned a wrong section under which he purported to act, did not effect the validity of the reference;

(2) the matter should be remitted to the High Court for it to deal with the original motion on the basis that the Minister's reference was valid and that the Industrial Court was vested with jurisdiction to hear and determine the dispute.

The following authorities were cited in argument:

- (1) *Kenderaan Bas Mara v. Yew Bon Tew* [1980] 1 M.L.J. 311, 312, 313.
- (2) *Free Lanka Insurance v. Ranasinghe* [1964] 1 All E.R. 457 (P.C.).
- (3) *Director of Public Works v. Ho Po Sang* [1961] 2 All E.R. 721.
- (4) *Chief Kofie Forfie v. Seifah* [1958] 1 All E.R. 289, 290.
- (5) *Kannan v. Menteri Buruh & Tenaga Rakyat & Ors.* [1974] 1 M.L.J. 90.
- (6) *P. Raman v. Chairman, Board of Governors, SRJK. Gopeng & Anor.* [1973] 2 M.L.J. 161.

FEDERAL COURT.

D.P. Xavier for the appellant.

V.T. Nathan for the respondent.

*Cur. Adv. Vult.*

**A** Suffian L.P. (delivering the judgment of the Court):  
The appellant, a trainee conductor employed by the respondent company, was dismissed with effect from March 20, 1975. He made representations to the Minister of Labour and Manpower under section 16A of the Industrial Relations Act, No. 35 of 1967. The Minister set in motion the machinery under the section, and as no settlement was reached, on August 29, 1975, referred the matter to the Industrial Court, under subsection (9) of the section.

Section 16A provides as follows:

"(1) Where a workman considers that he has been dismissed without just cause or excuse by his employer, ... he may, within one month of such dismissal, make representations in writing to the Minister to be reinstated in his former employment.

(2) The Minister may, before making a decision on any such representations, request the Commissioner to enquire into the dismissal and report whether in his opinion the dismissal is without just cause or excuse, and in such an enquiry the workman may be represented by his trade union.

(9) Notwithstanding the provisions of the foregoing subsections, the Minister may of his own motion if he is satisfied that it is expedient so to do or on the joint request of the trade union representing the workman and his employer or his trade union refer any dismissal to the [Industrial] Court for settlement."

In due course the Industrial Court directed that the appellant be reinstated with effect from November 1, 1977.

The company did not reinstate him, and so he complained to the Industrial Court of the non-compliance under section 56 of the Act. On March 11, 1978 the Industrial Court heard the complaint and again directed reinstatement. And on the same day the company applied for leave for an order of *certiorari* in the High Court to quash the award of the Industrial Court. Leave was granted and the substantive motion was heard by Vohrah J. on April 5, 1979. Then for the first time the company raised a preliminary point — the point being that since section 16A had been repealed by the Industrial Relations (Amendment) Act, 1975, Act A299/75, effective from August 1, 1975, (see P.U.(B) 292 of July 17, 1975), it was no longer effective on August 29, 1975, the date the matter was referred by the Minister to the Industrial Court; and that it not being disputed that the Industrial Court was clothed with jurisdiction if and only if there had been a proper reference to it by the Minister, the Industrial Court therefore had no jurisdiction to determine this dispute, and it followed that the award purporting to reinstate the appellant was null and void. The learned judge agreed and upheld the preliminary objection. It is against that decision that this appeal has been brought.

The sole issue here is, did the Industrial Court have jurisdiction to determine this dispute?

The company contends that the court did not, because the letter written on behalf of the Minister to the court mentioned section 16A as the authority under which he made the reference, a provision which was then no longer in existence — a contention with which, as we have seen, the learned judge agreed. The appellant on the other hand contends that the real question is not whether or not the Minister had

authority to refer the dispute to the Industrial Court under section 16A, but whether or not at the material time he had authority under the law to make the reference.

With respect we agree with the appellant's contention as to the real issue, and with his further submission that the Minister did have authority to make the reference under section 23(1) and (2) of the Act (now section 26(1) and (2) of the Revised Act).

It is now necessary to reproduce that section and the letter on behalf of the Minister referring this dispute to the Industrial Court.

The section reads:

"(1) Where a trade dispute exists... the Minister may, if that dispute is not otherwise resolved, refer the dispute to the court on the joint request in writing to the Minister by the trade union representing the workmen who are parties to the dispute and the employer who is a party to the dispute or a trade union representing the employer.

(2) The Minister may of his own motion refer any dispute to the court if he is satisfied that it is expedient in the public interest so to do..."

The letter dated August 29, 1975, reads:

"Dismissal of [the appellant] from [the estate].

I am directed to draw your attention to the above matter and to say that an investigation under section 16A of the Industrial Relations Act, 1967, has been carried out but without bringing about a settlement. The union and management have agreed that the matter be referred to the Industrial Court.

2. The Minister of Labour and Manpower agrees that the matter be referred to the Industrial Court under section 16A(9) of the Industrial Relations Act, 1967, for settlement.

OSMAN BIN HAJI HASSAN  
for the Secretary-General, Ministry of  
Labour and Manpower."

Without doubt the appellant was a "workman" (as defined by section 2), there was a "trade dispute" (as defined by the same section) between him and his company and that dispute had not been resolved. The second sentence of the Ministry's letter says that the union and management have agreed that the matter be referred to the Industrial Court. In view of this, there seems little doubt that there must have been a joint request in writing to the Minister by the union and employer that this dispute be referred to the Industrial Court. Therefore in our judgment this reference falls squarely within subsection (1) of section 23.

In any event, there is not the slightest doubt that it can fall squarely within subsection (2) of the same section, which in the clearest term provides that the Minister may of his own motion refer any trade dispute, which this was, to the court if he is satisfied that it is expedient to do so. This subsection does not require a request, joint or otherwise, from anybody.

In our judgment, what matters is whether or not the Minister has power to refer this dispute to the Industrial Court, not whether or not the right section has been cited in his letter of reference. If he has the power under one section but the letter mentions the wrong section under which he purports to act, that does not affect the validity of the reference.

So for the above reasons we would allow this appeal. Accordingly we set aside the learned judge's

A order and we order that this matter be remitted to the High Court for it to deal with the originating motion proper on the basis that the Minister's reference was valid and that the Industrial Court was vested with jurisdiction to hear and determine the dispute.

B Costs of this appeal and below to the appellant.  
His deposit to be refunded to him.

*Appeal allowed.*

Solicitors: D.P. Xavier & Co.; Shearn Delamore & Co.

## C PERTAMA CABARET NITE CLUB SDN. BHD. v. ROMAN TAM

[F.C. (Suffian L.P., Abdul Hamid F.J. & Mohamad Azmi J.)  
December 11 & 12, 1980]

[Kuala Lumpur — Federal Court Civil Appeal  
No. 280 of 1980]

D *Practice and Procedure — Application for interim injunction — Alleged breach of contract for personal appearance to sing — Undertaking not to sing elsewhere in Kuala Lumpur — Whether damages adequate remedy — Defendant not a resident of Malaysia — Interim injunction granted.*

E *Contract — Alleged breach of contract for personal appearance to sing — Whether damages adequate remedy — Defendant not a resident of Malaysia — Interim injunction granted — Specific Relief Act (Act 137), s. 55.*

In this case the appellants alleged that the respondent, a well-known singer from Hongkong, had signed a contract agreeing to appear and sing at the appellant's night club for a number of days. It was a term of the agreement that in the event of breach, the respondent would not be entitled to perform in Kuala Lumpur during the period fixed in the contract or three months thereafter. It appeared that the respondent declined to honour his contract and was singing at another night club. The appellants claimed an injunction and damages and applied for an interim injunction to restrain the defendant from appearing at any opera, theatre, concert hall or other public or private entertainment in Kuala Lumpur until the hearing of the summons. The learned trial judge refused the application and the appellant appealed to the Federal Court.

G **Held:** in this case the respondent was not a resident of this country and it was unrealistic to suppose that the appellants would be sufficiently compensated by money damages alone. In the circumstances the interim injunction applied for should be granted.

Cases referred to:-

- H (1) *Hampstead and Suburban Properties Ltd. v. Diomedous* [1968] 3 All E.R. 545.  
(2) *Lumley v. Wagner* (1852) 1 De G.M. & G. 604; 42 E.R. 687; 91 R.R. 193.  
(3) *Broome (Selangor) Rubber Plantations v. R.H. Whitley* [1919] 1 F.M.S.L.R. 365.

The following case was also cited in argument: *Warner Brothers Pictures Inc. v. Nelson* [1936] 3 All E.R. 160.

K.Y. Chew for the appellants.

I Respondent not represented.

**Suffian L.P.** (delivering the judgment of the Court):  
We allowed this appeal and now give our reasons.

The plaintiffs run a night club in Kuala Lumpur, the Pertama Cabaret Nite Club. According to their affidavit, on September 30, 1980, the well-known singer from Hongkong known as Roman Tam, defendant,